

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

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| FRANKLIN ANTONIO MORENO- BRAVO | : | DOCKET NO. 2:06-cv-0675 Section P |
| VS. | : | JUDGE TRIMBLE |
| JOHN ASHCROFT, ET AL. | : | MAGISTRATE JUDGE WILSON |

ORDER

Currently before the court is “Motion for Judgment on the Pleadings filed before the Eastern District of New York; for Release from Custody Pending Final Adjudication; and/or for Expedited Adjudication of the Petition” [doc. 25] filed by *pro se* petitioner, Franklin Antonio Moreno-Bravo. By this motion, the petitioner seeks to have the court grant an immediate judgment in his favor, release him from custody pending a decision in this matter, and/or expedite consideration of this petition.

Petitioner originally filed this petition in the United States District Court for the Eastern District of New York on January 15, 2003 challenging his removal order and seeking a stay of removal. *See Moreno-Bravo v. Ashcroft*, 1:03-cv-0265 (EDNY). Petitioner was granted a stay of removal on February 4, 2003. *Id.*, doc. 4. On November 19, 2003, petitioner’s petition was denied and his stay was lifted. *Id.*, doc. 14. Petitioner filed a Notice of Appeal, and his stay was re-instated during the pendency of his appeal. *Id.*, docs. 16, 17. While his appeal was pending in the Second Circuit Court of Appeals, petitioner filed an “Amended Petition for Writ of *Habeas Corpus*” on October 14, 2005, wherein he challenged his continued detention and sought his immediate release.

Id., doc. 22. The court ordered the government to answer the amended petition. After consideration of the parties' arguments, the New York district court determined that it lacked jurisdiction to consider petitioner's challenge to his detention since he was not confined within its territorial jurisdiction. Accordingly, the court transferred the petition challenging petitioner's detention to this court on April 21, 2006. *Id.*, doc. 27.

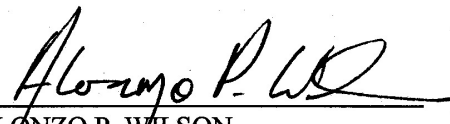
Following an initial review by this court, a Memorandum Order was issued on August 10, 2006, requiring the government to answer the petition and to specifically address whether petitioner is detained pursuant to INA § 236(c) or § 241. [doc. 23]. After all delays have run, the court will determine the need for an evidentiary hearing, and if no hearing is necessary, a Report and Recommendation will be issued without further notice.

Because a determination regarding the constitutionality of petitioner's continued detention requires further development of the facts and legal issues surrounding his detention, this court finds that he is not entitled to judgment on the pleadings currently before this court and that ordering petitioner's release at this time would be premature and possibly unjustified. Additionally, this matter is proceeding along the regular course with no undue time delays. The cases are handled on a first come, first serve basis, and this case will not be expedited.

For these reasons,

IT IS ORDERED that the motion be and it is hereby **DENIED**.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, August 31, 2006.


ALONZO P. WILSON
UNITED STATES MAGISTRATE JUDGE